STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-580

June 22, 1999

PUBLIC UTILITIES COMMISSION
Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design

ORDER ON RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. BACKGROUND

On March 19, 1999, the Commission issued its Order in Phase I of this case (hereinafter the Initial Order). On April 6, 1999, the Industrial Energy Consumer Group (IECG) filed a Request for Clarification of the Initial Order. On April 8, 1999, FPL Energy Maine, Inc., the Independent Energy Producers of Maine and S.D. Warren Company (collectively referred to as the Generators) filed a petition to reconsider. On April 8, 1999, we received Central Maine Power Company's (CMP) Motion to Reconsider or Clarify Order.

On April 21, 1999, the Hearing Examiner issued a procedural order waiving the 20-day time deadline to act on motions to reconsider established by Chapter 110, § 1004 of the Commission's Rules of Practice and Procedure. In this Order, we address the issues raised by the parties in their respective motions.

II. CMP'S MOTION TO RECONSIDER

A. Advertising Expense

1. Summary of Initial Order

In the Initial Order, we found that CMP should be allowed to include in its revenue requirement calculation $1,977,000 for advertising expenses in the rate effective year.

2. Motion for Reconsideration/Clarification

CMP seeks reconsideration of the Commission's finding that the $1,977,000 amount of advertising expense is applicable to the rate effective year. The Company asserts that the $1,977,000 was intended to be a test year amount and, thus, should be adjusted to a rate year amount in the attrition adjustment. The Company claims it discussed the specific categories of advertising spending throughout its case on a test year level.

3. Analysis and Conclusion

Our decision in the Initial Order was not based on the assumption that the test year level of advertising is a reasonable proxy for the kind and amount of advertising needed by the post-restructuring utility. Instead, we concluded that, based on the advertising needs that a restructured utility would have, the *amount* in the test year – namely $1,977,000 – would be a reasonable estimate.[1] Thus the trending applied to other test year expenses – which is intended to account for changes in the volume or cost of similar activities from the test year to the rate year – has no application here. Therefore, we decline to reconsider our finding concerning the amount of the advertising expense to be included in the rate year.

B. Pricing Flexibility

1. Summary of Initial Order

In our Initial Order, we found that non-core revenues in the rate year should be estimated based on levels of non-core sales similar to those under the ARP, using comparable T&D prices with adjustments for known changes. We will determine the adjustments for known changes in Phase II. We stated that this ratemaking treatment would not relieve CMP of the obligation to re-examine its existing non-core sales and prices in light of current customer options and costs, and to minimize any new discount it provides or any current discount it extends.

The Initial Order further directed CMP to reform existing bundled contracts that extend past March 1, 2000 in a way that preserves the benefit of the bargain for the contracting parties. It also generally described the review processes we would use for CMP's non-core pricing proposals and the prudence protection that would flow from these processes.

2. Request for Reconsideration/Clarification

In its April 13, 1999 Memorandum in Support of Motion to Reconsider or Clarify Order, CMP requested clarification as to what exposure it would have to future prudence reviews and possible disallowances associated with its non-core pricing. CMP also sought specific changes to the Initial Order that would result in a more flexible review process for its non-core pricing proposals, with prudence protection being granted after a summary review and a finding that a pricing proposal met a set of criteria and requirements similar to those contained in the ARP.

[1] Indeed, there was credible evidence that would have supported a *lower* allowance.

Specifically, CMP proposed the following:

- existing bundled contracts that are revised to preserve the benefit of the parties' bargain should be reviewed in 30 days; future prudence review of these would then be foreclosed;

- renewals or extensions of existing contracts and optional targeted tariffs that reflect T&D rate levels comparable to the ARP should also be reviewed in 30 days. If the applicable criteria were met, the contract or tariff would take effect and future prudence review would be foreclosed. If not, CMP would have a choice of a more in-depth review process (up to 4 months) before proceeding, or it could go forward with the contract or tariff without any ratemaking assurance;

- for changes to existing contracts and optional targeted tariffs and new contracts and tariffs, there would be a 30-day review period. If the applicable criteria were met, the contract or tariff would take effect and future prudence review would be foreclosed. If not, there would be a more in-depth review during a period no longer than 4 months.

3. Analysis and Conclusion

The ARP has provided CMP with substantial discretion to discount its prices. The 30-day summary review process currently in place has provided the only regular oversight by the Commission of CMP's pricing decisions. The current process is well-defined by the ARP stipulation; our view is largely a matter of verifying that the prices are above the applicable floors. CMP has used its pricing flexibility extensively. It currently has well over 50 special contracts and approximately 15 targeted tariffs, most of which were put in place under the ARP.

The pricing flexibility review process has worked well under the ARP. Because CMP's discount pricing proposals have not impacted core customers, we have not had to analyze the most difficult question: what would occur but for the discount. The recommendations in CMP's Motion would have us use a summary review process similar to one we currently use for discount proposals that now impact core customers' rates. In addition, the recommendations in CMP's Motion would actually *increase* its pricing flexibility compared to the ARP by allowing the Company to choose to go forward with non-core tariffs and contracts even if they do not comply with the applicable criteria and requirements.

We will not adopt CMP's proposal that the Commission would grant prudence protection to all of CMP's discount pricing activity after only a summary review. However, we grant CMP's request that the Initial Order be clarified with regard to the review of, and ratemaking treatment for, non-core pricing.

CMP's non-core pricing can be categorized into three groups: (1) unbundled existing contracts; (2) ARP-comparable renewals; and (3) new or substantially changed contracts and optional targeted tariffs. We address each category below.

a. Unbundled existing contracts

These are existing contracts for bundled service with terms that extend beyond March 1, 2000. The Initial Order directs CMP to reform these contracts in a manner that preserves the benefit of the bargain to the contracting parties. Additionally, there are recently adopted statutory provisions that apply to these contracts. Specifically, P.L. 1999, ch. 398, Part K, will require CMP to reform these contracts so that, if a customer has exercised due diligence to obtain the lowest price from the market for supply, the T&D price would equal the difference between the bundled contract price and the customer's market price for supply.

We will require CMP to file unbundled existing contracts as they are reformed, together with documentation of the customers's best market price for supply and the process by which the price was obtained. We will complete a summary review within 30-days after a contract is filed. The main purpose of our review (assuming no dispute between the parties) will be to ensure that a contract is reformed in a manner that complies with the statute. If it does, CMP will face no prudence risk for the associated discount in any future proceeding.

b. APR-comparable renewals

These are renewed contracts or extensions of optonal targeted tariffs that are T&D equivalents of a contract or tariff put in place under the ARP. The Initial Order would apply a 30-day summary review process to these contracts. If the renewal or extension is equivalent to an arrangement put in place under the ARP, we will presume in any future rate proceeding, unless there is credible contrary evidence, that the discount is reasonable. If CMP seeks greater assurance that it will not be at risk for these prcing decisions, it can request that the Commission conduct a more in-depth review and either reject or render a prudence finding regarding the contract or tariff. Such a proceeding would take four months.

The main purpose of our 30-day summary review of ARP-comparable contracts and tariffs will be to verify that the renewal or extension is actually comparable to the bundled version put in place under the ARP. CMP must support its claim with market price information. We will also verify that the applicable criteria and processes governing CMP's pricing flexibility continue to be met.[2] Finally, we will require CMP to provide documentation of the customer's alternative when it files APR-comparable pricing proposals, although our summary review will not entail an in-depth

[2] We will apply criteria similar to those currently used under the ARP, such as marginal cost-based floors, for this purpose.

"but-for" analysis. If major problems are apparent from our summary review, however, we may suspend the effectiveness of a contract or tariff to allow for further review.

c. New/changed

For first-time contracts and optional targeted tariffs and renewals of contracts and tariffs that are not comparable to a bundled contract or tariff put in place under the ARP, we will require a 30-day summary review process similar to the current ARP process. The filing requirements and review process will be similar to those for ARP-comparable proposals, except with respect to verifying that a proposal is ARP-comparable.

The summary review of a new/changed contract or optional targeted tariff will not result in any presumption of reasonableness or prudence findings. The ratemaking treatment of these contracts and tariffs will be addressed in Phase II. If our review in Phase II is sufficiently in-depth, it will serve the same purpose as a prudence review and there will not be any further review in future proceedings. If the review is not in-depth, the contract or tariff will be subject to a future prudence review. CMP may also seek prior approval and a prudence finding for a new contract or optional targeted tariff. Such a process would take up to four months.

Finally, should CMP seek greater assurance that it will recover discount amounts associated with these contracts and tariffs, we encourage it to explore approaches (e.g., shorter duration contracts, or contracts with adjustable rates) that allow beneficial contracts and tariffs to go forward without awaiting a regulatory pre-approval process.

C. Union Water Power

1. Summary of Initial Order

In the Initial Order, we found that Union Water Power (UWP) was entitled to the gain on the sale of the UWP property sold as part of the FPL/CMP asset sale. The Commission, however, rejected the $18 million allocation made by CMP, which was based on the valuation set forth in the FPL/CMP contract. The Commission found that OPA witness Chernick's revenue stream approach, which allocated $2.46 million of the Asset Sale Agreement (ASA) purchase price to CMP, was the best evidence available of the value of the UWP assets sold as part of the ASA. Given the uncertainty of even this best available allocation methodology, the Commission added $2.34 million to Mr. Chernick's allocation. We then added the uncontested amount ($1.7 million) allocated to UWP under the Supplemental Sale Agreement (SSA). As a result, on an overall basis, UWP was allocated $6.5 million of the total CMP/FPL sale proceeds.

2. Motion for Reconsideration/Clarification

In its Motion to Reconsider, CMP requests that the Commission allocate $18.0 million to UWP from the UWP assets sold under ASA as well as $1.7 million from the SSA. In the alternative, CMP requests that if this request is denied the $6.5 million allocated to UWP by the Commisison be allocated from ASA and that UWP also receive the $1.7 million from the SSA.

In its Motion, the Company argues that the Commission established a “no losers” principle to govern the restructuring process. Thus, if the decision regarding the UWP allocation is not modified, CMP will be a “loser” since the Company, at the time of the asset sale, in fact transferred $18.0 million to UWP, and CMP will have to make up the deficiency between this amount and the amount allocated by the Commission. In asserting that it is entitled to the full $18 million, the Company takes issue with what it sees as implications in the Commission’s Order that it was indifferent to ratepayers’ interests on this issue and that it somehow could have structured its bid process differently. In the alternative, the Company maintains that if the Commission continues to believe that it is proper to reject FPL’s valuation of $18 million for the UWP property under the ASA, the Commission should clarify its Intial Order to make it evident that the $6.5 million the Commission allocated to UWP is the amount allocated only under the ASA and that an additional $1.7 million is allocated to UWP as the undisputed amount allocated from the SSA.

3. Analysis and Conclusion

The Company’s reliance on the “no losers” principle is misplaced for several reasons. The “no losers” principle was laid down by the Commission as a guide in the rate design decision-making process. The “test” was never intended to apply to the Commission’s decision on stranded costs or revenue requirements which, by their very nature, require that there be “winners” and “losers” on each particular contested issue.

More importantly, the Commission’s allocation of $6.5 million to UWP can in no way be seen to transform CMP into a “loser.” UWP and CMP are both wholly-owned subsidaries of the CMP Group, Inc. By paying UWP $19.7 million rather than the $6.5 million allocated by the Commission, the Company has essentially transferred money from one of its pockets to another. As we noted in our decision concerning treatment of the proceeds from the asset sale, the question of how CMP Group chooses to utilize the cash proceeds from the FPL asset sale is an issue for senior management.

We have determined for regulatory purposes, however, that $6.5 million represents a fair value of the amount allocated away from CMP to UWP in calculating the gain on the sale. This number was primarily based on Mr. Chernick’s revenue stream approach, which we concluded provided the best estimate of the value of the assets based on the methodologies that the Law Court has found acceptable in valuing property for taxation purposes. As long as the amount we have allocated for the UWP property represents the fair value of that property, as we believe it does, neither the Company nor its shareholders can be said to be losers. Indeed, to allocate more would make losers of the ratepayers. Therefore, we reject CMP's motion that we modify our decision to allocate $18.0 million in value from the ASA to UWP.

Our decision to adopt Mr. Chernick's methodology should not be interpreted as a finding that CMP was imprudent in the way it structured its bid process. Our Order simply concluded that based on the information available to us, Mr. Chernick's methodology, although imperfect, provided the best estimate of the value of the UWP assets sold as part of the ASA. We adjusted this amount upward by $2.34 million to account for the uncertainty involved in the Chernick allocation. We then added $1.7 million, the undisputed allocation to UWP under the SSA. These amounts resulted in a total allocation to UWP of $6.5 million. Since it was our intent to allocate $6.5 million in total to UWP from both the ASA and the SSA, we reject CMP's alternative request for clarification on this issue.

D. Accounting Treatment of Buyback Costs

CMP asks that language be included in the final order that would specifically allow the appropriate accounting entries to match the timing of the utilization of the excess buyback costs over the period from the closing on the generating asset sale until March 1, 2000. We believe that our orders in this docket and the asset sale approval case are designed to permit the accounting treatment that CMP seeks to have included, but in order to provide the assurance that the Company's outside auditors apparently require, we incorporate the following language as part of our Order in this case.

CMP may allocate a portion of the proceeds from the sale of its generating assets to FPLE to cover the incremental power supply costs resulting from such sale. The incremental power supply costs will be determined by subtracting the total power supply costs of the generation assets sold to FPLE from the FPL buyback costs. The total power supply costs are the revenue requirement that would have resulted from CMP's generation of power from the sold assets but for the sale.

E. Post April 1995 Expenses

1. Summary of Initial Order

In our Initial Order we disallowed recovery by the Company of certain expenditures associated with engineering and feasibility studies done on the Wyman and Mason generation units that were sold to FPL. We disallowed these amounts because the expenditures apparently occurred after April 1, 1995, the cutoff date provided in the restructuring statute, and because we saw no evidence that the studies were helpful in CMP's obtaining the best price it could for its assets. We found that studies did not meet the criteria for recovery, but that we could not ascertain the precise amount of the expenditures, and so we required CMP to provide the costs of the studies during Phase II.

2. Motion for Reconsideration/Clarification

CMP seeks reconsideration of our decision to disallow recovery of certain capitalized studies that were related to the divested generating assets at the Wyman and Mason stations. CMP claims that the studies actually were completed prior to April 1995, and that they were provided to potential buyers of the plants, thus resulting in higher bid prices for the assets.

3. Analysis and Conclusion

The Company does not cite any record evidence that would support either of its claims in its motion. We will, however, allow the Company to present evidence in Phase II of this proceeding showing that the studies were completed prior to April 1995, and that the expenses would otherwise qualify as an offset to the sales price received for the assets. To the extent that the Company is able to present facts during Phase II of the case that support its claim that the studies were actually performed prior to April 1995 and that the expenditures are legitimately classified as capital items, we will allow recovery from the sale proceeds of the costs of the engineering and feasibility studies performed on the Wyman and Mason stations.

F. Carrying Cost on Asset Sale Gain Account Prior to March 1, 2000

1. Summary of Initial Order

In our Initial Order we held that the capital savings on the excess value generated by the FPL asset sale should be calculated on a regulatory book basis and not on an "incremental" cash basis as proposed by CMP. We noted that the available value regulatory asset should be treated like other regulatory assets on the Company's books, and that the Company's overall pre-tax cost of capital established in this case, 12.22%, should be used as the carrying cost rate to be applied to this negative regulatory asset balance through March 1, 2000.

2. Motion for Reconsideration/Clarification

CMP has requested reconsideration of the proper cost rate to be applied to the available value account. In its reconsideration request, the Company argued that the cost of capital established in the Commission's Initial order was only relevant to the restructuring rate year beginning March 1, 2000 and, therefore, it should not be applied during the interim period from the time of closing on the asset sale through the time of implementation of retail access. Rather, the Company argues the Commission should use an 11.69% carrying charge rate which the Company claims is its current cost of capital as filed in the Company's annual ARP rate change case and is to be applied to the Company's DSM regulatory balance. The Company has not, as part of its motion, requested reconsideration of the decision to base the capital savings on a regulatory book basis rather than on an incremental cash basis.

3. Analysis and Conclusion

In analyzing the Company's motion, it is helpful to view the cost of capital as the rate charged for "use" of the Company's money between rate cases. The Commission, in the Company's last rate case, *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345, set the Company's overall pre-tax cost of capital at 12.5%. The cost of capital was modified slightly to reflect the impact of the Company's buyout of the FAME Financed Fairfield Energy Venture (FEV) contract buyout. *Central Maine Power Company, Proposed Electric Rate Stabilization Project-Fairfield Energy Venture*, Docket No. 94-213, Order (Nov. 15, 1994). This cost rate, 12.63%, was applied to the Company's regulatory assets in calculating the Company's revenue requirements going into the ARP and is, in fact, the rate that the Company has applied to its QF Buyout regulatory assets created after the ARP.

Had the Commission accepted the Company's proposal to write off all of its generation assets at the time of the closing of the asset sale and to flow the asset sale savings into rates immediately, the 12.63% rate would have represented the cost rate that ratepayers would have avoided had we accepted the Company's write off proposal. Our decision not to write off the Company's generation-related regulatory assets until March 1, 2000 should not, however, affect the capital savings provided by the available value asset. Thus, we believe that a very strong argument could be made to raise the carrying cost rate from 12.23% to 12.63%.

The Company is correct that 11.69% is the rate that will be applied to the DSM regulatory asset balance during this year. This number is based on a specific provision of the original ARP stipulation concerning the treatment of DSM costs. Specifically, the original ARP stipulation provides that carrying costs on deferred DSM will be "calculated using the average cost of capital at the end of the prior year." *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345 (Phase II), Stipulation at Attachment I (Oct. 14, 1994). CMP has calculated this amount by taking its year end actual capital structure and cost of debt and plugging in the return on equity established by the Commission in Docket No. 92-345. Thus, the return the Company is using in this calculation was established in 1992, yet the debt rate and debt structure is based on 1998 year end balances. These cross-time period rates have little or no connection with each other or with CMP's current situation as a T&D only utility. We can see little merit of using this hybrid rate here.

The overall cost of capital rate, which we established in this case, was based on the best available information as of the time of our decision. The rate assumed CMP had divested its generation assets at the agreed upon purchase price to FPL. This has occurred. We therefore believe that the 12.22% rate best reflects the Company's cost of capital from the time of closing of the asset sale until March 1, 2000. Although, as noted above, a strong argument can be made that the 12.63% rate is the proper cost rate to be applied to the available value account through March 1, 2000, we will not, *sua sponte*, modify our Order to impute this higher rate to CMP.

G. Ratemaking Treatment of Certain QF Contracts

1. Summary of Initial Order

The Initial Order recognized that CMP currently has four qualifying facility (QF) contracts for which prices are set only through December, 2000. In the Order, we noted that CMP and Regional Waste Systems (RWS) are currently in litigation over the setting of post-2000 rates. In the event that the litigation is still pending or actual prices remain unknown by the conclusion of the Phase II proceeding, we stated that we would estimate the cost of the contracts to determine stranded costs "based on our interpretation of each contract's intent, the policies embodied in the Restructuring Act and avoided-cost estimates." Initial Order at 109.

2. Request for Reconsideration/Clarification

CMP requests that we reconsider this finding and, rather than using the predicted costs for these contracts for rate setting purposes, permit deferral of the difference between the predicted contract costs and the actual costs; the deferred difference would then be flowed through to ratepayers in the next rate proceeding following the determination of what amount is to be paid under these contracts. CMP argues that such a deferral mechanism is the fairest result for both the Company and its customers, because it prevents either side from enjoying a windfall or suffering an inappropriate loss.

RWS opposes CMP's request for two reasons: (1) it encourages CMP to ignore its duty to attempt in good faith to restructure QF contracts, as set forth in the Restructuring Act and the Commission Order; and (2) CMP's shareholders would not be harmed because the Commission could adjust its stranded cost determination when the contract rates become known.

3. Analysis and Conclusion

We grant CMP's request to reconsider our conclusion in this area. As a general ratemaking principle, rates are based on projected costs and revenues. Deferral of costs for later recovery is an exception to our ratemaking practices and, accordingly, occurs only upon strong justification. We find that deferral is justified here. In the typical rate setting process, we project future costs and revenues using historic test year values, adjusted for known and measurable changes. However, in this situation we would be placed in the difficult position of predicting the outcome of pending court litigation, justifying a departure from general ratemaking principles. Therefore, to the extend the actual post-2000 rates for these four contracts remain unknown at the conclusion of our Phase II proceeding, we will establish placeholders for the costs of those contracts[3] and allow CMP to defer the difference (either positive or negative) for future rate treatment.

Contrary to RWS's arguments, we fail to see how acceptance of CMP's position would encourage the Company to ignore its duty to attempt to restructure QF contracts. CMP has an ongoing statutory duty to mitigate its stranded costs, 35-A M.R.S.A. § 3208(4). If it does not do so, the Commission is required to prohibit full recovery of stranded costs. Additionally, the Order provides a positive incentive for QF contract restructuring by allowing CMP to retain 10% of the net savings from any such restructuring. Initial Order at 110. Finally, we note RWS's suggestion that CMP's shareholders can be protected by adjusting stranded costs when the outcome of the litigation and the actual rates become known effectively provides the same financial outcome as CMP's proposal for deferral.

H. Application of Generation-related Reduction to kW Charges

1. Summary of Initial Order

In the Initial Order, we described how the difference between current, bundled revenues and the newly-established T&D revenue requirement (the generation-related reduction) would be allocated among customer classes and among rate elements within a class. We adopted a top-down method that would begin with current bundled rates and allocate the generation-related reduction across and within classes in proportion to generation costs. We noted that both kW and kWh charges would be reduced if indicated by generation costs.

We also indicated that standard offer prices would provide a guide for generation costs for this purpose if our proposed amendments to Chapter 301 were approved by the Legislature. The amendments to Chapter 301 were recently approved, Resolve 1999, ch. 37, and thus, standard offer prices will be used to guide the allocation of the generation-related reduction among and within classes.

2. Request for Reconsideration/Clarification

CMP raised the issue of the top-down method in its Memorandum, arguing that only kWh charges should be reduced. However, CMP also noted that if standard offer prices include a kW charge then kW charges should also be reduced.

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[3] One possible approach would be to use the market prices CMP receives from the sale of the output from these contracts (made pursuant to 35-A M.R.S.A. § 3204(4) and Chapter 307 of our Rules). Thus, there would be no stranded costs related to these contracts reflected in Phase II. Adjustments (either positive or negative) to rates can than be made when actual stranded costs are known.

3. Analysis and Conclusion

Because standard offer prices will likely provide the measure of generation costs we use to implement the top-down allocation, CMP's argument appears to be moot. We see no need to reconsider our decision on this point.

III. IECG MOTION

A. Availability of Rate O, Rate SB and Other Targeted Tariffs

1. Summary of Initial Order

In the Initial Order, we described how CMP's rates for standby service will be designed. We found that CMP would provide T&D standby service pursuant to rates for the full requirement class in which the standby service customer would otherwise take service based on size and voltage level. A ratchet would continue to apply to standby demand, but ratchets will no longer apply to full requirements service.

2. Request for Reconsideration/Clarification

IECG requested clarification that other rates currently available to self-generators will remain available consistent with the "no losers" principle. Specifically, IECG sought confirmation that the Initial Order did not change the availability of current rate options such as Rate O and Rate SB.

In response to IECG, CMP cited reasons that Rates O, SB and other specialized rates may not make sense for T&D-only service. CMP requested the opportunity to propose revisions to or elimination of these rates in Phase II.

3. Analysis and Conclusion

Our decisions in this case regarding standby rates do not, by themselves, alter the availability of existing rate options for self-generators or any other customers. Nor do they affect the processes by which CMP can change or eliminate rate options except to the extent we have explicitly adopted new or changed criteria and processes for pricing flexibility.

The specific question of whether T&D versions of Rates O and SB should remain available, depends to some extent on whether the rate is core or non-core. For instance, continued availability of a core rate would be consistent with our "no losers" principle. If a rate is non-core, CMP would retain whatever flexibility it currently has to modify or eliminate the option. Whether Rate O or Rate SB should continue as a T&D rate may also depend on whether a T&D version of the rate would make sense, or is possible. For example, IECG acknowledges that Rate O may be eliminated because it is only an energy charge.

Whether and in what form these rates continue to be available after March 1, 2000 must be examined in further detail before a decision can be made. We direct CMP to address Rates O and SB in its Phase II filing, as well as any other currently available rate option not specifically designed as either core or non-core in CMP's Phase I filings.

IV. GENERATORS' MOTION

FPL Energy Maine, the Independent Energy Producers of Maine, and S.D. Warren Company (the Generators) petitioned the Commission to reconsider and clarify certain sections of the Initial Order that relate to station service rates charged to net generators.[4] We discuss each of the Generators' requested modifications below.

A. Incremental Natural of Station Service Load

The Generators ask the Commission to reconsider and/or delete a paragraph on page 154 of the Initial Order that concludes that "station service load is incremental to the load that its generation normally serves." The Generators argue that there is no record evidence in support of the factual conclusion in the paragraph, the record evidence contradicts the Commission's conclusions, and the record evidence on this point is not in contention.

The Public Advocate supports the Generators' request that the language in question be deleted, based on his view that CMP incurs no cost to provide station service to net generators.

CMP responded that it is appropriate to retain the language in the Initial Order and for the Company to explore factual underpinnings and cost implications in the next rate design proceeding. CMP notes that it provides other examples that illustrated incremental costs imposed by net generators, and the Commission's example presents a logical circumstance in which incremental costs may be caused by station service.

The Generators appear to take issue with what they view is a factual conclusion that there is an incremental cost for CMP to provide station service, arguing that there is no immediate need to determine what, if any, costs are incurred to provide station service to net generators. The language in question, however, makes no factual conclusion as to CMP's incremental costs. The language is a conceptual response to the argument that, because net generators produce and sell substantially more electricity than they take in station service, such generators impose no incremental costs on the system. The example provides an illustration of the incremental nature of station service relative to the load the generator serves. It is conceptually accurate. We

[4] RWS filed a letter generally supporting the Generators' Motion.

therefore decline to delete the paragraph, but clarify that we are making no factual finding regarding the existence of incremental costs that CMP incurs to meet station service load. Parties are not foreclosed from making any arguments in this regard in a future proceeding.

B. Recognition that Current Charges Exceed Costs

The Generators state that during deliberations statements were made that indicated agreement with net generator arguments that the current standby rates are well above the cost of providing T&D service. Citing individual Commissioner statements during deliberations, the Generators argued that certain Commissioner observations should be reflected in the Order. Specifically, the Generators request that the Order explicitly acknowledge that net generators currently, and will continue to, pay more than the cost of service, and that the Commission confirm that it will conduct a rate design proceeding within the next two or three years at which time it will establish cost-based standby rates.

CMP responded that it is premature for the Commission to reach any conclusion on net generator costs, because the Commission ruled it will not rely on the marginal cost study in this case, additional data will be provided in the next rate design case which could cause assumptions to change, and the Commission has not ruled on whether it would use marginal costs as opposed to embedded costs in the next proceeding. CMP also stated that the Generators' request that the Commission confirm that it will establish cost-based standby rates in a future rate design proceeding is unclear in its intent; for example, CMP notes it is unclear whether this means rates based on marginal or embedded costs, or whether stranded costs should be included.

We conclude that the Initial Order accurately reflects our findings and conclusions in Phase I of this proceeding regarding CMP's costs, their relationship to rates, and our expectations for a future rate design proceeding. For this reason, we deny the request to modify our Initial Order in these respects.[5]

C. Treatment of Stand-Alone Generators

The Generators ask that the Initial Order recognize the importance of the distinction between net generators and self-generators, and that we require CMP to prepare a separate tariff for net generator standby service in the next rate design case. CMP responds that it does not make sense to lock it into proposing a particular

[5] We note that reliance on individual Commissioner statements made during deliberations is generally not helpful in supporting a party's argument. Commission deliberations are public discussions by the Commissioners of the issues in a proceeding. Individual Commissioner statements do not constitute Commission action. Actual Commission findings and conclusions as determined during deliberations are reflected in the Commission's written orders.

approach two years before it can gather new data as a T&D company, examine its cost study methodology, and learn from the next few years' experience.

On page 152 of the Initial Order, we stated that, because of our top-down rate design approach, the issue of differentiating between net generators and self-generators is largely moot. We decline to alter this conclusion. Specific findings regarding cost distinctions and the determination of future of rate classes will be better informed when we examine T&D costs in the future rate design proceeding.

D. Contract Demand Charges

The Generators request that the Commission clarify the Initial Order to confirm that initial standby rates will be based upon actual demand, not contract demand. CMP states that the Commission's Initial Order is clear on this point; generators will be charged based on actual demand, with a ratchet, as they are now.

The language on contract demand cited by the Generators is a discussion responding to parties' arguments as to the theoretical appropriateness of such charges in the design of standby rates. The Initial Order does not imply the use of contract demand charges for short-term rates and states that March 2000 standby rates will retain the current structure. Such rates, consistent with the no-losers principle, will be the full requirements rates, subject to a demand ratchet as in CMP's current rate design. Because the Order is clear on this point, Initial Order at 145-46, we do not modify it in this regard.

Dated at Augusta, Maine, this 22nd day of June, 1999.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.